

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

DEC 10 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Parts 32 and 64 of the)
Commission's Rules to Account for)
Transactions between Carriers and)
their Nonregulated Affiliates)

CC Docket No. 93-251

To: The Commission

COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, submits these Comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM"), released October 20, 1993.

In the NPRM the Commission has proposed altering the valuation methods for transactions between a regulated carrier and its nonregulated affiliates to account for the fact that, because these transactions occur at less than arms' length, they may have lower transactional costs than transactions between nonaffiliated companies.¹ Specifically, the Commission has proposed distinguishing among classes of nonregulated affiliates of regulated

¹ NPRM at ¶¶ 2, 18.

carriers for the purpose of determining the appropriateness of using prevailing company pricing as a valuation method for affiliate transactions when the transaction is not tariffed.² Thus, the Commission has proposed permitting the use of prevailing company pricing only for transactions between a regulated carrier and its nonregulated affiliates which "have a primary purpose of serving" entities not affiliated with the carrier.³ The Commission has also asked "whether there are other distinctions among nonregulated affiliates that we should consider in reevaluating prevailing company pricing."⁴

PRTC respectfully submits that the Commission should distinguish among PRTC's nonregulated affiliates for purposes of the applicability of the affiliate transaction rules in toto, not just on the prevailing company pricing question. PRTC is a wholly-owned subsidiary of the Puerto Rico Telephone Authority ("PRTA"), which is a governmental instrumentality of the Commonwealth of Puerto Rico.⁵ Pursuant to an FCC Order, because PRTC is

² Id. at ¶¶ 18-19.

³ Id. at ¶¶ 19-20. The Commission has proposed that a nonregulated affiliate should be eligible for prevailing company pricing when it sells at least 75% of its output to non-affiliates. Id. at ¶ 22. PRTC believes the threshold percentage should be lower than 75%.

⁴ Id. at ¶ 20.

⁵ Five members of the PRTA Board of Directors are appointed by the Governor of Puerto Rico and two members are popularly elected. PRTA is not subject to the direction and control of any other department, agency or instrumentality of the Commonwealth government (referred to here as "government entities"), nor does it exercise direction or control of any other such government entity.

a governmental entity, it is considered to be "affiliated" with all other government entities in Puerto Rico.⁶ The consequences of this broad definition of "affiliate" are unnecessarily burdensome to PRTC, and the definition is unjustifiable. PRTC proposes that the Commission distinguish between PRTC's corporate affiliates (i.e., other subsidiaries of PRTA) and other Puerto Rico government entities for purposes of the affiliate transaction rules⁷ so that PRTC need not comply with those rules with respect to transactions between it and such government entities.⁸

The affiliate transaction rules, with the current interpretation of "affiliate," impose a great burden on PRTC. PRTC is required to list in its cost allocation manual ("CAM") "all affiliates, both within the PRTA and in other areas of the Puerto Rico government, [with] which it engages in or will engage in transactions, and describe the nature, terms and conditions of those transactions."⁹ PRTC must update this list quarterly and therein quantify

⁶ Puerto Rico Telephone Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 7321, 7322 (Com. Car. Bur. 1988) ("PRTC CAM Order"). See also Puerto Rico Telephone Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 4 FCC Rcd 4569 (Com. Car. Bur. 1989) ("PRTC CAM Reconsideration Order").

⁷ 47 C.F.R. Parts 32 and 64.

⁸ PRTC acknowledges that the Commission's affiliate transaction rules cover PRTA, PRTC, Puerto Rico Communications Corporation ("PRCC") and the Puerto Rico Public Broadcasting Corp ("PRPBC").

⁹ PRTC CAM Order, 3 FCC Rcd at 7322; 47 C.F.R. § 64.903(a)(4).

the impact of each change on its regulated operations.¹⁰ The rules proposed by the Commission here would increase even further the information PRTC would be required to report in its CAM and quarterly updates.¹¹

Under the current interpretation of the term "affiliate," the task of reporting on all transactions with all branches of the government is very difficult for PRTC given the large number of government agencies it deals with each year. That requirement is set forth in Exhibit 5 to Section V of the update to PRTC's cost allocation manual, filed March 31, 1993. There, PRTC listed the services it provides to those entities considered to be its affiliates by the Commission. The list includes almost 150 government agencies including the Department of Justice, the Puerto Rico Senate and all of the state universities. It provides telephone service on a tariffed basis to each of the listed "affiliates" and provides customer premises equipment to them at market prices after a bidding process.

In Exhibit 6 to Section V of its cost allocation manual update, PRTC lists the governmental agencies that provide services to PRTC. Those agencies include the Department of Justice, the Puerto Rico Power Authority and the University of Puerto Rico. In order to supply the Common Carrier Bureau with the required information about transactions that were not

¹⁰ 47 C.F.R. § 64.903(b).

¹¹ For example, PRTC will have to identify which of the affiliates listed in its affiliate transaction statement "sell" at least 75% of their output to non-affiliates, and it will have to describe its procedures for estimating fair market value of affiliate transactions. NPRM at ¶¶ 95, 97 and at Appendix--Proposed Rules, proposed §§ 64.903(a)(4) & (5).

conducted at a tariff price or at a market price, i.e., proof that they were conducted at cost.¹² PRTC would have to review the books of the other government agencies. PRTC does not have the right to such review and therefore is not able to determine the actual cost to the governmental entity. Currently, therefore, PRTC asks these entities to certify that the transactions have been done at their costs, which is a burden to these other agencies.

PRTC also "engages in transactions" with the Department of Labor when it pays unemployment taxes and the State Workers Compensation Board when it pays workers' compensation taxes. Any tax payments PRTC made to, for example, the Department of Labor were based on the assessment it received for its unemployment compensation taxes. PRTC cannot "prove" that these tax payments were at tariffed, market, or cost levels other than to direct the Bureau to the public records of the Puerto Rico government.

According to the Commission's rules, affiliates are "companies that directly or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, the accounting company."

47 C.F.R. § 32.9000. Control is defined as follows:

the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership or voting of securities, common directors,

¹² See PRTC CAM Reconsideration Order, 4 FCC Rcd at 4570.

officers, or stockholders, voting trusts, holding trusts, affiliated companies, contract, or any other direct or indirect means.

Id.

PRTC is incorporated in Delaware. It issues bonds in the public capital market and is responsible for its own debt. PRTC is not under the control of any of the governmental bodies that the PRTC CAM Order's reporting requirements cover other than the Puerto Rico Telephone Authority ("PRTA"), nor does PRTC have the power to direct the management or policies of any other government agency which is considered to be its "affiliate." It is a separate Board-governed entity that does not have any ownership relationship with any other branch of the Puerto Rico government. The Bureau's interpretation of "affiliate" with respect to PRTC is therefore overbroad because it encompasses these independent government agencies.

The overbroad definition does not serve the Commission's policies. As the Commission has noted in the NPRM, the purpose of the affiliate transaction rules is "to improve the safeguards against improper cross-subsidization."¹³ The reason to prevent cross-subsidization is to ensure that ratepayers "share in the efficiencies generated from joint use of the network" and pay just and reasonable rates for their telephone service.¹⁴ According to

¹³ NPRM at ¶ 4.

¹⁴ Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 6238, 6300 (1987).

the PRTC CAM Reconsideration Order, because PRTC has "key bottleneck facilities which all persons and entities must use," it has the "ability to shift resources from areas where it maintains complete dominance to those areas where it is developing new markets."¹⁵ These reasons for the affiliate transaction rules do not apply to PRTC's "transactions" with independent agencies of the Puerto Rico government. These agencies exercise governmental functions such as taxation, law enforcement, benefits administration and others unrelated to telecommunications and do not represent "new markets" for PRTC.

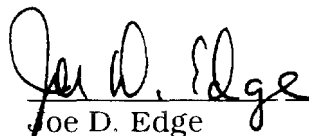
Thus, the Commission policy of preventing subsidization of nonregulated activities with revenues from regulated activities is in no way furthered by the requirement that PRTC inform the Commission about all of its transactions with every part of the Puerto Rico government. The interpretation of the term "affiliate" fails to take into account the indisputable fact that PRTC does not have the traditional relationship with these government agencies that other carriers have with their affiliated companies and the type of relationship with which the affiliate transaction rules are concerned.

For the reasons described above, PRTC urges the Commission to distinguish between PRTC's corporate affiliates and its so-called government

¹⁵ 4 FCC Rcd at 4570.

"affiliates" and to treat these independent government agencies as non-affiliates with respect to the applicability of the affiliate transaction rules.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Joe D. Edge", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Jean M. Layton, hereby certify that a copy of the foregoing
Comments of Puerto Rico Telephone Company was hand-delivered, this 10th
day of December, 1993 to the following:

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Jean M. Layton